# STATE OF MICHIGAN

# COURT OF APPEALS

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| MCMAHON HELICOPTER SERVICES, INC., and BRIAN MCMAHON,<br><br>Plaintiffs/Counter-Defendants-Appellants, | UNPUBLISHED<br>June 26, 2007 |
| v | No. 269982<br>Wayne Circuit Court |
| MID-WEST DEVELOPMENT, L.L.C., and DANIEL NAWROT,<br><br>Defendants/Counter-Plaintiffs-Appellees. | LC No. 04-431376-CK |

Before: Whitbeck, C.J., and Wilder and Borrello, JJ.

PER CURIAM.

Plaintiffs/counter-defendants, McMahon Helicopter Services, Inc. ("McMahon"), and Brian McMahon, appeal as of right the judgment entered, following a jury trial, against plaintiffs in the amount of $193,500 and in favor of defendants/counter-plaintiffs, Mid-West Development, L.L.C. ("Midwest"), and Daniel Nawrot. On appeal, plaintiffs also challenge the trial court's order that granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7), quieted title to the subject property in favor of defendants and dismissed plaintiffs' complaint. For the reasons set forth herein, we affirm the decisions of the trial court and the verdict of the jury.

This case involves a dispute over property that was operated as a heliport. On April 16, 1984, McMahon entered into a lease with Midwest for a 1.41-acre plot of land located in Canton. McMahon is owned and operated by Brian McMahon and Midwest is owned and operated by Daniel Nawrot. Pursuant to the terms of the initial lease, Midwest agreed to construct a 10,200 square foot building for use as a heliport on the rear parcel of the property. The lease also provided a five-year lease term at a rate of $3500 a month, with one five-year option to renew, and required McMahon to pay all property taxes, insurance premiums and maintenance costs. The five-year renewal option required McMahon to notify Midwest of its intent to renew within 90 days of the expiration of the first term of the lease. Lease payments in the second term increased to $4,500 a month. Midwest also granted McMahon an option to purchase the property ("option") for: (1) $390,000 by June 1, 1986; or (2) $400,000 by

December 1, 1987. Shortly after the parties executed the lease, the heliport was constructed on the rear parcel of the property.

In early 1990, the parties entered into negotiations for a purchase of a portion of the land, and Midwest prepared an agreement of sale for $388,000, which was never signed by the parties. In January 1990, the first term of the lease expired, and McMahon began making payments to Midwest of $4,500 a month. On February 2, 1990, Midwest prepared a land contract stating a purchase price of $440,000 and monthly payments of $4,500 a month. Brian McMahon only executed the land contract. However, the sale agreement and land contract contain different descriptions of the property to be sold, i.e., the descriptions only identify the rear parcel of the 1.41-acre plot.

On August 6, 1990, Midwest submitted a "Property Split/Combination Application Form" to the Canton Department of Municipal Services, indicating its request to divide the land into the front and rear parcels. Midwest's stated reasons for the application were "split lot for selling and record" and "ingress/egress easement." On August 29, 1990, Brian McMahon notified Daniel Nawrot of his understanding that the parties were "not quite ready to close on this building [on the rear parcel]." On October 29, 1990, Canton authorities denied the proposed property split. Midwest was never able to split the property.

In light of the Zoning Board's rejection, Midwest determined in January 1992 that it could circumvent the zoning requirements by creating a concurrent interest in the property. Midwest contacted McMahon and prepared a proposed warranty deed and easement agreement that would create a tenancy in common. However, the parties never agreed to this provision either, and consequently, on April 8, 2004, McMahon filed an affidavit in Wayne County claiming an interest in the entire property. Plaintiff then filed a four count complaint alleging, in essence, that defendant had breached the land contract either overtly or was estopped from reliance on the statute of frauds based on the doctrine of promissory estoppel because plaintiff had relied on misrepresentations of defendant. Shortly thereafter, defendants filed a counter-complaint against plaintiff requesting the trial court quiet title to the entire property in its favor and award back rent.

The trial court entered summary disposition against plaintiff concluding that the parties did not have a valid land contract and found there was not evidence of fraud or misrepresentation on the part of defendants, and quieted title in favor of the defendants. The trial court dismissed plaintiff's motion for summary disposition on the grounds that questions of fact as to whether defendants were entitled to back rent and whether plaintiffs were entitled to capitol improvements to the heliport. Following a jury trial, plaintiff was ordered to pay $193,500 in rent from November 1998 to present. This appeal followed.

Plaintiffs first argument on appeal is that the trial court erred in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). Plaintiffs contend that the trial court erred in concluding that the statute of frauds precluded plaintiffs' interest in the rear parcel and that the parties did not have a valid land contract.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Cawood v Rainbow Rehab Ctr*, 269 Mich App 116, 118; 711 NW2d 754 (2005). MCR 2.116(C)(7) provides grounds for summary disposition if the claim is barred by the statute of frauds. "In analyzing a motion for summary disposition pursuant to MCR 2.116(C)(7), the

contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Pusakulich v Ironwood*, 247 Mich App 80, 82; 635 NW2d 323 (2001). This Court must also consider the pleadings, affidavits, depositions, admissions and documentary evidence filed or submitted by the parties to determine whether a genuine issue of material fact exists. MCR 2.116(G)(5); *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000). If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 377; 532 NW2d 541 (1995). If a factual dispute exists, however, summary disposition is not appropriate. *Id.* Whether the statute of frauds applies to bar an action is a question of law that is also reviewed de novo on appeal. *In re Handelsman*, 266 Mich App 433, 435; 702 NW2d 641 (2005).

In *Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999), this Court defined a land contract:

> The term 'land contract' is commonly used in Michigan as particularly referring to 'agreements for the sale of an interest in real estate in which the purchase price is to be paid in installments (other than an earnest money deposit and a lump-sum payment at closing) and no promissory note or mortgage is involved between the seller and the buyer.' 1 Cameron, Michigan Real Property Law (2d ed), § 16.1, p 582.

Under a land contract, the "vendor retains legal title until the contractual obligations have been fulfilled, [and] the vendee is given equitable title, and that equitable title is a present interest in realty that may be sold, devised, or encumbered." *Graves v American Acceptance Mortg Corp (On Rehearing)*, 469 Mich 608, 614; 677 NW2d 829 (2004). Equitable title only passes to the vendee upon proper execution of the land contract. *Zurcher, supra* at 291.

The statute of frauds dictates the form of a land contract. *Zurcher, supra* at 276.[1] The statute of frauds is codified at MCL 566.106, which provides:

> No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

MCL 566.108 provides similar requirements for contracts for interests in lands:

> Every contract for the leasing for a longer period than 1 year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or

[1] The *Zurcher* Court distinguished between "the *form* of a contract for the sale of land and the *substance* of that contract." See *Zurcher, supra* at 276 (emphasis in original).

> some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing . . . .

Thus, to satisfy a challenge under the statute of frauds, a contract for the sale of land must: "(1) be in writing and (2) be signed by the seller or someone lawfully authorized by the seller in writing." *Zurcher*, *supra* at 277.

"The substance of a binding contract for the sale of land is a subject separate from its sufficiency under the statute of frauds and one that is governed by" general contract law. *Zurcher*, *supra* at 279. The substance of a contract for the sale of land is governed by the general contract law principle that "there must be a meeting of the minds regarding the 'essential particulars' of the transaction." *Id*. (citation omitted). The "material or essential provisions of a binding contract for the sale of land . . . are the identification of (1) the property, (2) the parties, and (3) the consideration." *Id*. at 290-291.

In order to prevail, plaintiffs must demonstrate that sufficient writings exist to satisfy the statute of frauds. Because no such writings exist, the trial court was correct in its dismissal of plaintiff's claim.

"The statute of frauds does not require that the entire agreement be in writing, but only requires that 'a note or memorandum of the agreement' is in writing and signed." *Kelly-Stehney & Assoc, Inc v MacDonald's Industrial Products, Inc (On Remand)*, 265 Mich App 105, 111; 693 NW2d 394 (2005), citing MCL 566.132(1) and *Opdyke Investment Co v Norris Grain Co*, 413 Mich 354, 367; 320 NW2d 836 (1982). In determining whether sufficient writings exist to satisfy the statute of frauds, this Court employs a case-by-case approach. *Forge v Smith*, 458 Mich 198, 206; 580 NW2d 876 (1998). The writing must sufficiently set forth the essential terms of the agreement to satisfy the statute of frauds and thus render the alleged contract enforceable. *Opdyke*, *supra* at 369. "Some note or memorandum having substantial probative value in establishing the contract must exist; but its sufficiency in attaining the purpose of the statute depends in each case upon the setting in which it is found." *Id*. at 368, quoting *Goslin v Goslin*, 369 Mich 372, 376; 120 NW2d 242 (1963) (internal quotation marks omitted). "A note or memorandum may be sufficient under the statute of frauds in any number of forms, including a letter, an account statement, a draft or note, or a check." *Kelly-Stehney*, *supra* at 113 (citations omitted).

In the present case, the documentary evidence submitted by plaintiffs are insufficient to satisfy the statute of frauds. Plaintiffs primarily rely on: (1) an undated purchase agreement indicating a sale price of $388,000 for the rear parcel; (2) the February 2, 1990, land contract that was only signed by Brian McMahon; (3) the August 6, 1990, Property Split Application listing McMahon as the proposed buyer; (4) an undated closing statement and receipt, listing a payment by McMahon of $13,500; and (5) various checks paid by McMahon to Midwest from 1991 to 1997 that each list the term "rent" or "lease" in the subject line. Although all of the relevant evidence submitted by plaintiffs are in writing, none of the documents are signed by the seller, Midwest, "or someone lawfully authorized by the seller." *Zurcher*, *supra* at 277. These documents, taken together, are insufficient to satisfy the statute of frauds. Accordingly, the parties never had a valid land contract and defendants were entitled to summary disposition pursuant to MCR 2.116(C)(7).

Plaintiffs next raise three unpreserved claims on appeal. Plaintiffs contend that the doctrines of promissory estoppel and partial performance operate as exceptions to the statute of frauds. Plaintiffs also argue that the trial court erred in failing to consider their claim for unjust enrichment. Generally, an issue is preserved if it was raised before and addressed by the trial court. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). Although plaintiffs raised these arguments below, the trial court did not address the issues. Therefore, they are unpreserved for appellate review. However, because the present issues involve questions of law and the facts necessary for their resolution have been presented, we will address them. *Detroit Free Press, Inc v Family Independence Agency*, 258 Mich App 544, 555; 672 NW2d 13 (2003), citing *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

Plaintiffs first argue that promissory estoppel operates to bar the application of the statute of frauds in the present case. Generally, an issue of statutory interpretation is a question of law that this Court reviews de novo on appeal. *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 8; 596 NW2d 620 (1999). We note that plaintiffs have failed to cite any authority indicating that the equitable doctrine of promissory estoppel operates as an exception to the statute of frauds in the context of a real estate transaction. This Court is not required to search for authority to sustain or reject a position raised by a party without citation to authority. *In re Reisman Estate*, 266 Mich App 522, 533; 702 NW2d 568 (2005). Nonetheless, we conclude that plaintiffs cannot establish the elements necessary for a promissory estoppel claim.

"Promissory estoppel is a judicially created doctrine that was developed as an equitable remedy applicable in common-law contract actions." *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538, 549 n 4; 619 NW2d 66 (2000). The elements of promissory estoppel are: (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999).

Assuming, but not deciding, that the doctrine of promissory estoppel operates as an exception to the statute of frauds, we conclude that plaintiffs have failed to establish the elements necessary to establish a claim for promissory estoppel. "To support a claim of estoppel, a promise must be definite and clear." *Schmidt v Bretzlaff*, 208 Mich App 376, 379; 528 NW2d 760 (1995). Moreover, a "plaintiff cannot construct a detrimental reliance or estoppel theory on a conditional promise, especially when the condition did not take place." *Bivans Corp v Community Nat'l Bank of Pontiac*, 15 Mich App 178, 182; 166 NW2d 270 (1968). "The doctrine of estoppel should be applied only where the facts are unquestionable and the wrong to be prevented undoubted." *Barber v SMH*, 202 Mich App 366, 376; 509 NW2d 791 (1993).

In the present case, plaintiffs claim that the (1) option, (2) land contract, (3) tenancy in common documents (including the proposed warranty deed and proposed easement) and (4) various oral representations by Nawrot constituted a promise by Midwest and that McMahon relied on this promise to their detriment by paying $4,500 a month. However, nothing in these documents amounts to a definite and clear promise on Midwest's behalf. *Schmidt*, *supra* at 379. The evidence shows that a transfer of the rear parcel to McMahon was conditioned on a split of the entire 1.41-acre plot, which was never approved. Hence, because the condition upon which

plaintiffs base their promissory estoppel theory did not occur, we conclude that plaintiffs' argument does not warrant relief on appeal.

Plaintiffs also argue that the doctrine of partial performance operates as an exception to the statute of frauds. "This Court reviews de novo questions of law such as whether the statute of frauds bars enforcement of a purported contract." *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995) (citation omitted).

Partial performance of a contract may remove it from the statute of frauds. *Giordano v Markovitz*, 209 Mich App 676, 679; 531 NW2d 815 (1995). Factors to consider include whether plaintiffs had possession, made improvements to the land and made payments of money to the defendant. *Zaborski v Kutyla*, 29 Mich App 604, 607; 185 NW2d 586 (1971). However, "[w]here the contract cannot be performed within one year, partial performance fails to negate the statute's writing or signature requirements." See *Zander*, *supra*, at 445 (holding that the plaintiffs could not rely upon the doctrine of partial performance where they failed to show that a written agreement to enter into a lease satisfied the statute of frauds, MCL 566.108).

In the present case, plaintiffs produced evidence indicating that they took possession of the premises, made improvements to the rear parcel and made payments to Midwest. However, in light of the undisputed evidence that Midwest failed to sign the land contract and the fact that the land contract was to be performed over a period of five years, plaintiffs' partial performance argument must fail. As noted, *supra*, the land contract does not satisfy the statute of frauds, MCL 566.108. Notwithstanding plaintiffs' partial performance, they have failed to negate the signature requirement provided for in MCL 566.108. See *Zander*, *supra* at 445. Accordingly, plaintiffs are not entitled to appellate relief on this issue.

Plaintiffs also argue that the trial court erred in granting defendants' motion for summary disposition because they submitted documentary evidence to support their claim for unjust enrichment. Generally, whether a claim for unjust enrichment can be maintained is a question of law the this Court reviews de novo. *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 137; 676 NW2d 633 (2003).

In order to sustain a claim of unjust enrichment, plaintiffs must establish (1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant. *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). "The theory underlying quantum merit recovery is that the law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another." *Morris Pumps v Centerline Piping*, 273 Mich App 187, 194; 729 NW2d 898 (2006) (citation omitted). However, a contract will be implied only if there is no express contract covering the same subject matter. *Belle Isle*, *supra* at 478.

Initially, we note that plaintiffs have failed to cite any authority indicating that a party may bring a claim for unjust enrichment based on payments under an invalid land contract. However, our Supreme Court has recognized that a plaintiff may seek affirmative equitable relief when mistakenly, but in good faith, he has improved the land of another to the unjust enrichment of the latter, and when the title owner had full knowledge of the improvement as it was being made. *Ollig v Eagles*, 347 Mich 49, 61; 78 NW2d 553 (1956). Notwithstanding the holding in *Ollig*, we conclude that there is an express contract between plaintiffs and defendants that

concerns the subject matter at issue. Plaintiffs seek past payments under the land contract of $4,500 a month and the costs of improvements to the rear parcel. However, the express provisions of the lease provide for a $4,500 a month payment in the second five-year term of the lease and in any ensuing month. Furthermore, the lease contains a clause indicating that McMahon, at its own expense, will "keep the said premises and every part thereof" in good repair and that all improvements on the property, excluding furniture and trade fixtures, installed at McMahon's expense become property of Midwest at the expiration of the lease. Thus, because the lease covers the same subject matter as plaintiffs request pursuant to their claim for unjust enrichment, the trial court was precluded from granting relief. *Belle Isle*, *supra* at 478.

Plaintiffs next argue that the statute of limitations did not operate to bar their claims. A review of the lower court record shows that the trial court did not address the issue. In light of our conclusion that the trial court properly granted defendants' motion for summary disposition and that plaintiffs' interest in the rear parcel is barred by the statute of frauds, we need not consider whether plaintiffs' claims would have survived a challenge based on the statutes of limitations.

Plaintiffs next argue that the trial court erred in granting Midwest leave to amend its counterclaim to reflect that Midwest sought past due rent from 1998 to 2004.

This Court reviews a trial court's decision regarding a motion for leave to amend pleadings for an abuse of discretion. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

"A party may amend a pleading once as a matter of course . . . within 14 days after serving the pleading if it does not require a responsive pleading." MCR 2.118(A)(1). However, leave to amend pleadings is granted freely in the interest of justice, except where the court finds that particular reasons justify denial of the opportunity. *Jenks*, *supra* at 420. Motions to amend should be denied only for specific reasons such as:

> [1] undue delay, [2] bad faith or dilatory motive on the part of the movant, [3] repeated failure to cure deficiencies by amendments previously allowed, [4] undue prejudice to the opposing party by virtue of allowance of the amendment, [and 5] futility . . . . [*Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997); see also MCR 2.118(A)(2).]

Here, the trial court properly granted defendants' request for leave to amend the counterclaim to reflect claims for past due rent from 1998 to 2004. Plaintiffs argue on appeal that the trial court's order resulted in undue prejudice because leave to amend the counterclaim occurred three days before trial, thereby depriving McMahon of the opportunity to present a defense to the claim at trial. However, although the original counterclaim did not indicate the time period that McMahon allegedly failed to pay rent, it did place McMahon on notice that Midwest was seeking past rent. The primary purpose of a pleading is to provide adverse parties with notice of claims and defenses they will have to meet or defend. See MCR 2.111(B)(1); *Grzesick v Cepela*, 237 Mich App 554, 560; 603 NW2d 809 (1999). The original counterclaim provides that McMahon occupied the rear parcel "since 1984" and that McMahon "ceased

paying rent and filed this suit in an attempt to gain title to the land." Further, the lower court record reveals that Midwest attached a letter to its response to McMahon's motion for summary disposition indicating the time period that McMahon had failed to pay rent. The letter, which is dated September 14, 2005, was sent to McMahon's counsel and indicates that McMahon was delinquent in paying rent on various occasions from 1991 to 2004. An itemized summary listing the amount due each year is attached to the letter. We conclude that the letter attached to Midwest's response brief was sufficient to notify McMahon, almost a year before trial, of the time period that Midwest sought past rent. Midwest's requested amendment did not seek to introduce a new theory or claim into the case and McMahon had reasonable notice that Midwest would rely on its claim for past rent at trial. *Weymers, supra* at 658. Accordingly, the trial court's decision to grant Midwest's motion for leave to amend its counterclaim was not an abuse of discretion because it was within the range of reasonable and principled outcomes. *Maldonado, supra* at 388.

Plaintiffs finally argue that the trial court erred in denying McMahon's motion for summary disposition pursuant to MCR 2.116(C)(10) on Midwest's counterclaim for past rent. Because Midwest created a question of fact regarding whether McMahon exercised the option to renew at the increased rental rate of $4,500 a month, we disagree with plaintiffs' final argument on appeal.

This Court reviews de novo a trial court's grant of a motion for summary disposition. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West, supra* at 183. "The interpretation of a contract is . . . a question of law this Court reviews de novo on appeal, including whether the language of a contract is ambiguous and requires resolution by the trier of fact." *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 184; 678 NW2d 647 (2003) (citations omitted).

A contract should be read as a whole, with meaning given to all of its terms. *Century Surety Co v Charron*, 230 Mich App 79, 82; 583 NW2d 486 (1998). Contract language must be given it its ordinary and plain meaning if such would be apparent to a reader of the instrument. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71 n 1; 467 NW2d 17 (1991). If a contract must be construed according to its terms alone, it is the court's duty to interpret the language. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003). "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *McIntosh v Groomes*, 227 Mich 215, 218; 198 NW 954 (1924).

In the present case, the lease provides a monthly rental rate of $3,500 a month from April 1984 to March 1989. The lease also contains a holdover provision that provides as follows:

> It is hereby agreed that in the event of the Tenant herein holding over after the termination of this lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary.

The parties also executed a rider to the lease:

> Upon the expiration of the term of this lease, and provided that Tenant notifies Landlord within 90 (ninety) days prior to the expiration of the terms of this lease, Tenant shall have the option to renew this lease for an additional five (5) years under the same terms and conditions, except that the rental [sic] will be $270,000.00 for the option period payable in monthly installments of $4,500.00 each. Tenant will continue to be liable for payment of property taxes, insurance premiums, maintenance costs, etc.

According to the unambiguous terms of the lease and the rider, McMahon would be considered a holdover tenant at a rate of $3,500 a month if it failed to give the required notice. However, a review of the lower court record shows that defendants created a question of fact by submitting documentary evidence indicating that McMahon exercised the option to renew the lease for $4,500 a month after the expiration of the first five-year term.

First, defendants included the deposition testimony of Brian McMahon, which provides as follows:

> *Q.* And it was a five-year lease; is that correct?
>
> *A.* Yes.
>
> *Q.* At the end of the five-year period, did you exercise the option to renew the lease?
>
> *A.* Yes, sir.
>
> *Q.* That would have been in 1989; is that correct?
>
> *A.* Well, actually, it ended up being '90, because the start of the lease actually occurred when we got into the building. We drew the lease up before the building was completed – and I believe that's noted in here – and that ended up to be January of '85. So we ended up into 1990, which is the date of the land contract.
>
> *Q.* Right. Did you exercise the option to renew the lease for five years?
>
> *A.* Renew the lease? No.
>
> *Q.* My question to you is did you renew the option – I'm sorry. Did you exercise the option to renew the lease for five years?
>
> *A.* As far as I know, I've never renewed the lease. I've never gotten a new lease, and I've never renewed the lease at all.

*Q*. In 1990, did you continue making payments to Midwest?

*A*. Correct.

*Q*. What was the amount of the payments that you made?

*A*. $4,500 a month.

Second, defendants included numerous checks from McMahon, dated as early as March 1991, indicating monthly payments of $4,500. On each of the checks, McMahon noted that the payment was made pursuant to the lease or that each check was for "rent." Third, defendants included a copy of a March 26, 2003, letter from Brian McMahon indicating that he included three $4,500 "rent" payments for January 2002 through March 2002. Viewing the forgoing evidence in a light most favorable to defendants, we conclude that reasonable minds might differ on the issue of whether McMahon exercised the option to renew the lease at a rate of $4,500 a month. *West*, *supra* at 183. Since there was a factual dispute for the jury to resolve, the trial court properly denied plaintiffs' motion for summary disposition and submitted the issue to the jury. The jury subsequently found that McMahon owed $193,500 in past due rent from November 1998 to 2004 and that McMahon was not entitled to a setoff for an overpayment of rent. Plaintiffs do not challenge the jury's award of damages or its conclusion that McMahon is not entitled to a setoff for overpayment of rent. Thus, we conclude that plaintiffs' final claim of error does not warrant appellate relief.

Affirmed.

/s/ William C. Whitbeck, C.J.
/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello